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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 LEE E. BUCHWALD, as Chapter 7
5 Trustee for Magnesium
6 Corporation of America and
7 Related Debtor, Renco Metals,
8 Inc.,

9 Plaintiff,

10 v.

11 13 CV 7948 (AJN)
12 Trial

13 THE RENCO GROUP, INC., a
14 Delaware corporation, et al.,

15 Defendants.

16 -----x
17 New York, N.Y.
18 February 2, 2015
19 9:00 a.m.

20 Before:

21 HON. ALISON J. NATHAN,

22 District Judge

23 APPEARANCES

24 BEUS GILBERT, PLLC
25 Attorneys for Plaintiff
BY: LEO R. BEUS
SCOT C. STIRLING
ROBERT STIRLING
MALCOLM LOEB

KAYE SCHOLER LLP
Attorneys for Defendants
BY: H. PETER HAVELES, JR.
JEFFREY A. FUISZ
-and-
PARK JENSEN BENNETT LLP
BY: TAI H. PARK
STEVEN C. BENNETT

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1 (Trial commenced)

2 MR. BEUS: Leo Beus, Scott Stirling, Rob Stirling.

3 Good morning, your Honor.

4 THE COURT: Good morning.

5 For the defendant.

6 MR. HAVELES: Your Honor, Pete Haveles of Kaye Scholer
7 LLP. To my left are Tai Park and Steven Bennett of Park Jensen
8 Bennett, and to the far left is Michael C. Ryan, vice-chairman
9 and general counsel of The Renco Group.

10 THE COURT: Good morning, everyone. It's a good
11 morning, especially if you're a Patriots fan. I think the only
12 time I have not received filings in this case in the last month
13 was in the hours between 6:30 and 9:30 last night.

14 We are here to commence trial in this matter. I'll
15 take remaining preliminary matters that we can address before
16 we get our jury pool. I have had my clerk handed out a few
17 moments ago what I intend to use as the basis of my voir dire.
18 I will give you a few additional minutes to look at that and
19 let me know if there are any glaring problems or objections.

20 Before we turn to that, let me ask for outstanding
21 issues to be addressed.

22 MR. BEUS: Mr. Haveles and I worked out the
23 modifications to the slides you objected to. We don't have
24 anything else.

25 THE COURT: I'm sure we will repeat that request, but

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1 please do what you can to always have a mic in front of you.
2 Hopefully, that's operational. Is it not?

3 MR. HAVELES: It is, your Honor. The cord is a little
4 tight so I have to yank it closer and lean forward.

5 THE COURT: It will be good for your posture.

6 MR. HAVELES: I'm still celebrating from last night,
7 your Honor.

8 Your Honor, with respect to the various slides that
9 were addressed in the letter that we submitted yesterday
10 morning, your Honor's ruling addressed all but one of them.

11 THE COURT: That was the newspaper article?

12 MR. HAVELES: Slide 45, yes, your Honor.

13 THE COURT: I'll hear from plaintiff.

14 MR. S. STIRLING: Your Honor, the newspaper article
15 was attached to a memorandum. It was attached to a memorandum
16 provided to at least a couple of the --

17 THE COURT: You're taller than that mic, I'm afraid.

18 MR. S. STIRLING: I'll try again. Thank you.

19 Your Honor, as you can see, we have put it up on the
20 screen. This is the exhibit in which that article appears. It
21 is a memorandum to Mr. Ryan, among others, and attached is a
22 memorandum to Mike Legge from Howard Kaplan, all defendants in
23 the case, dated 22 May 1996, and it is referring to what is
24 happening with magnesium prices.

25 One of the attachments to this memorandum that they

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wrote and that Mr. Kaplan called to the attention of the other defendants is this article. The entire exhibit including that article was on our exhibit list in August of last year. There is no objection to the exhibit.

And I think to raise an untimely objection to a page in an exhibit that they have had in front of them since the deposition was taken, I think, of Mr. Kaplan about this memorandum, I think it is untimely. They did not object.

THE COURT: Mr. Haveles, you did not object to the exhibit?

MR. HAVELES: We do not object to the exhibit, your Honor. I will acknowledge that our oversight was, we focused on the underlying memo, which is admissible and to which we don't object, and we overlooked the fact that there was a newspaper article at the time, and we did not express an objection in connection with the pretrial report that was submitted last August.

THE COURT: Overruled.

Any other matters?

MR. HAVELES: That was the only slide that was left, your Honor.

THE COURT: Thank you.

A few other preliminary matters to note. I have the agreed-upon charge. We have time to sort this out. I don't think you indicated when you want me to direct the jury as to

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1 the absence of defendants during the course of the trial. Do
2 you have a request in that regard?

3 MR. HAVELES: Your Honor, after the opening statements
4 is probably the best time, we think.

5 THE COURT: I will ask you to remind me if it looks as
6 though I'm forgetting.

7 MR. HAVELES: Yes, your Honor. Thank you.

8 THE COURT: Along those lines, if there are other,
9 through the course of the trial, limiting instructions that are
10 requested, then it's on you to make the request in the moment
11 or raise it in advance so that I can have language in front of
12 me and the benefit of your request as to timing. So even if
13 I've indicated I'm going to give a limiting instruction of some
14 kind, you must make a specific request in the moment.

15 There are stipulations that we dealt with over the
16 weekend. I overruled the objections. You otherwise worked out
17 the language. Stipulations are for you to present to the jury.
18 So when you decide you want them read to the jury, you should
19 meet and confer so the other side knows it's coming, but simply
20 indicate to the jury that these are stipulations agreed to
21 between the parties and read them at the time that you propose.

22 MR. HAVELES: Your Honor, there are a number of
23 stipulations that the parties agreed to in the joint pretrial
24 report which are basically, I believe, designed and intended to
25 deal with some common basic background issues. And I would

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1 respectfully submit right after the opening statements and
2 before evidence starts that the pretrial report stipulation be
3 read to the jury since the whole purpose of them was to get
4 issues out of the way before evidence started.

5 MR. S. STIRLING: That's fine with us, your Honor.

6 THE COURT: Sort it out. One of you or both of you
7 will read the stips and just indicate to the jury that these
8 are facts agreed to by the parties coming in as stipulations.
9 And in my final instructions to the jury there will be an
10 explanation of stipulations of fact. But just read those in as
11 you agree and at the time that you propose.

12 Other preliminary matters.

13 MR. HAVELES: Your Honor, we will read the voir dire,
14 but starting yesterday there was publicity about this case
15 starting to appear, primarily in business press, as opposed to
16 anything else. But we want to confer, but we may ask the Court
17 to add a question to the voir dire as to whether anyone has
18 seen any of the publicity that started over the weekend with
19 respect to this case. Dow Jones ran a story on its wire
20 service on Saturday. A couple of the periodicals had an
21 article online and in print today.

22 We just think that may be an issue that has to be
23 addressed. After we read once more the voir dire, we will
24 advise your Honor about whether we think asking about awareness
25 of the lawsuit is prudent.

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1 THE COURT: Okay.

2 Anything else?

3 MR. BEUS: Just one item. You indicated you did not
4 want birth defects. The document I am going to use would you
5 prefer blocked out or can I just pull it out to begin with so
6 you can't read the other. I want to make sure I don't do
7 anything improper. Are you okay with me redacting that portion
8 from the document, just making it blank?

9 THE COURT: Mr. Haveles?

10 MR. HAVELES: For whatever reason, spatially I'm not
11 understanding what Mr. Beus has in mind. If he shows it to me,
12 if it's okay with me, I'll let him know.

13 THE COURT: Show it to Mr. Haveles.

14 MR. BEUS: There it is. We redacted it. That's what
15 we have done, if that's appropriate.

16 MR. HAVELES: I think just maybe without the word
17 redacted. Just the white space is probably better, your Honor.

18 MR. BEUS: We will do it however. We don't care.

19 THE COURT: With agreement, you'll redact redacted.

20 MR. BEUS: My technical people say they may not be
21 able to get the word redacted off, but we will try.

22 THE COURT: We are not priority for jury pools this
23 morning because of criminal cases ahead of us. We are hoping
24 to get our pool by 11:15, which is too bad.

25 Other matters to take up? Why don't I step down and

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1 let you come to agreement hopefully on the document you just
2 showed me, take a look at the questionnaire, and I'll take some
3 final suggestions, which I've already printed these. Unless
4 there is anything in here that's problematic, I'll just do
5 additional questions orally.

6 It's 9:14. I'll return at 9:30. Thank you.

7 (Recess)

8 THE COURT: Counsel.

9 MR. HAVELES: Your Honor, Mr. Stirling and I and Mr.
10 Beus have conferred on the proposed voir dire and we have a few
11 comments, if we may.

12 On page 3, in subsection E, case-specific questions,
13 you start to ask about the case, but there is not an indication
14 when you would be reading the case summary that the parties
15 stipulated to.

16 THE COURT: I do that before we turn to the
17 questionnaire, and I will read what you submitted to me.

18 MR. HAVELES: Thank you.

19 Second, after question No. 9 in that section it is
20 there that we recommend that your Honor ask if anybody in the
21 jury box or in the panel or the pool has seen any newspaper
22 reports or articles either in print or online regarding the
23 trial and the dispute between the parties.

24 THE COURT: Mr. Stirling.

25 MR. S. STIRLING: We agree with that, Judge.

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1 MR. HAVELES: The last comment, your Honor, on page 4,
2 question No. 15. As an introductory note, I will note that
3 question No. 15 is intended.

4 THE COURT: Going back to the prior request, following
5 question No. 10, have you heard anything about this case
6 through the media, the Internet or through any other source?
7 Doesn't that cover it?

8 MR. HAVELES: It may be imprecise. Maybe we should
9 just say, have you heard or read, your Honor.

10 THE COURT: I will add read.

11 MR. HAVELES: Thank you, your Honor. I apologize for
12 not having caught that.

13 THE COURT: I am not going to add an additional
14 question. When I read this question I will say, have you heard
15 or read anything about this case through the media, the
16 Internet, or through any other source.

17 MR. HAVELES: Could I ask that it also say this case
18 or the trial. Because the articles that appeared over the
19 weekend were specifically about this trial.

20 THE COURT: I think that's covered within the case.
21 The danger is that you pique people's curiosity.

22 MR. HAVELES: I'm sorry, your Honor. Question 15 on
23 page 4. It was intended, and it may have been our fault in
24 presenting it to you, to parallel question 13. In 13 we say
25 manufacturing or mining of metals, and in question 15 it just

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1 says manufacturing before the dash. We would ask before the
2 dash you insert the phrase, or mining of metals or other
3 natural resources so that the two parallel each other. And I
4 have reviewed that with Mr. Stirling.

5 THE COURT: Again, I don't see a need to reprint the
6 questionnaire. I will read that when I read the question
7 orally.

8 MR. HAVELES: Those are our only comments on the
9 proposed voir dire, your Honor.

10 THE COURT: Mr. Stirling.

11 MR. S. STIRLING: We have none, your Honor.

12 THE COURT: Thank you.

13 Other matters to take up, gentlemen?

14 MR. HAVELES: Defendants are not aware of any at this
15 time before we begin jury selection, your Honor.

16 THE COURT: In terms of schedule, we will keep pushing
17 to get the jury here as soon as we can. I will suspect I will
18 let all of us break for lunch around 12:45, 1:00. I'll give
19 preliminary instructions to the full panel at that point
20 regarding no communication or seeking of information about the
21 case.

22 I think it will be close as to whether or not I can
23 get the jury selected today, given the time that I'm getting
24 the panel, but it may be close. I will probably indicate that
25 I'll let them go no later than 5:30. I hope to get everybody

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1 out by 5. But if we are close to being finished it will be
2 worth pushing through a bit longer so as not to bring everybody
3 back tomorrow. But I won't keep anyone here later than 5:30.
4 We will see how it goes.

5 Let me ask, in terms of when I read from what you
6 proposed regarding the parties and counsel, are all individuals
7 who are here and at counsel's table covered in this list?

8 MR. HAVELES: Your Honor, there will be one person
9 whom we request you add to the list, and she will be sitting at
10 counsel table with us to assist us. Her name is Julie
11 Blackman. That's the only person whom defendants would request
12 be added to the list, your Honor.

13 THE COURT: And she is an attorney at Kaye Scholer?

14 MR. HAVELES: She is not an attorney at Kaye Scholer.
15 She is someone who we retained to assist us, your Honor.

16 THE COURT: Is she affiliated with a firm?

17 MR. HAVELES: She is not affiliated with a law firm,
18 your Honor. She is affiliated with a legal support firm.

19 MR. S. STIRLING: Your Honor, on the plaintiff's side
20 we have Mr. Dewey here with us. In order to have a backup, in
21 case he is unable to be here at any time, we would suggest
22 adding Taiba Velic. And she is a paralegal with our law firm
23 and would also be assisting with the technology here at
24 counsel's table.

25 THE COURT: I'm sorry. The person you mentioned

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1 earlier is on this list that you provided?

2 MR. S. STIRLING: I'm not certain, your Honor. I'm
3 sorry. Bart Dewey. I understand he is not on that list, your
4 Honor.

5 THE COURT: For Beus Gilbert PLLC, I have Leo Beus,
6 Scott Stirling, Malcolm Loeb, Robert Stirling, and you want me
7 to add -- give me the names again.

8 MR. S. STIRLING: Bart Dewey and Taiba Velic.

9 THE COURT: Paralegals working with your firm.

10 MR. S. STIRLING: The last two, yes.

11 THE COURT: Mr. Haveles, for you I have you, Jeffrey
12 Fuisz, and Julie Blackman.

13 MR. HAVELES: And then Mr. Park.

14 THE COURT: And Mr. Park.

15 MR. HAVELES: Mr. Bennett.

16 THE COURT: Tai Park, Steven Bennett from Park
17 Bennett.

18 MR. HAVELES: Right.

19 THE COURT: Anything else?

20 MR. HAVELES: That's it for counsel, your Honor.

21 THE COURT: If there is nothing else.

22 MR. S. STIRLING: Your Honor, I was just reminded, I
23 believe the list that you have also does not include an
24 associate in our firm who has been admitted pro hac more
25 recently, Nishan Wilde, an attorney with Beus Gilbert.

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1 MR. HAVELES: Your Honor, just for the point of candor
2 with the Court, colleagues of mine from Kaye Scholer will be in
3 the courtroom sitting in the benches back and forth through the
4 course of the trial, but not always at all times to assist.
5 They won't be at counsel table. The question is whether your
6 Honor would like their names for the purposes of the reading
7 since they won't be at counsel table.

8 THE COURT: How many people?

9 MR. HAVELES: I'm talking four additional associates,
10 your Honor. Actually, one may sit at counsel table from time
11 to time, so it's probably prudent to add his name.

12 THE COURT: Go ahead.

13 MR. HAVELES: His name is John Scott. The other
14 associates will be in the back on the benches from time to time
15 during the course of trial, but not at all times.

16 THE COURT: I think we will pick up anyone who knows
17 anyone at Kaye Scholer. Given that we are naming specifically
18 those who will be at counsel table and otherwise naming the
19 firm, I think we are covered.

20 Anything else?

21 I will give you time to relax. Stay close. As I say,
22 we will keep pushing. I do not want to have any idle time once
23 we have word we have our panel. Be close and I'll plan to come
24 back to the bench at about let's say 10:30 so as to address any
25 other matters that you can think of that will expedite our

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1 process. Thank you.

2 (Recess)

3 THE COURT: I wanted to confirm for the court
4 reporter's schedule that typical practice in civil cases is not
5 to have the court reporter during the voir dire itself. I
6 would instruct the court reporter to come back for the
7 beginning of the process and set of initial instructions, but
8 once we begin the voir dire process to let them go.

9 MR. HAVELES: We understood that from our discussion
10 back on the 20th.

11 (Recess)

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1 THE COURT: Matters to take up, counsel? Anything
2 emerge?

3 No?

4 MR. HAVELES: Your Honor, we will just report that
5 Mr. Stirling and I had conferred two breaks ago about the
6 stipulated facts, and we both thought that it made sense for
7 the entirety of them to be read right after opening statements
8 and before the start of evidence.

9 THE COURT: Okay.

10 MR. HAVELES: More likely than not, Mr. Stirling will
11 just read everything because we thought, if we alternate back
12 and forth, it would distract people from listening as opposed
13 to watching the performance.

14 THE COURT: That's fine. Anything else?

15 MR. SCOT STIRLING: Nothing.

16 THE COURT: We don't have our jury pool yet, and
17 things are slow, apparently, I guess because of the weather.
18 So we're still pressing to get our people as soon as we can,
19 and we will report back when we have more information.

20 I will just do some rearranging of folks. There is
21 plenty of room for everybody in the courtroom, but I will ask
22 my deputy to do some rearranging temporarily, so that we have
23 all of our potential jurors in one area, and spectators are
24 welcome in another area. So please just follow those
25 instructions.

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I did want to note, I know a number of people have phones here, on my reluctant authorization. Make sure they're off. Some of my colleagues, if a phone rings during a proceeding, confiscate it for the remainder of the proceeding. I'm considering that option. Consider that fair warning. But our jurors will be here without their phones, without the ability to check their email and the like, and so the last thing I would like to see happen is for it to be readily brought to their attention that there are some number of you here with devices. Obviously, there are things you need for purposes of presentation at trial, but I'm certain all of those phones are not among them, so you are warned.

All right. If there is nothing else, I will step off again and ask that you stay close, so that as soon as we get word from the jury department, we can proceed.

Thank you.

(Recess)

THE COURT: I have bad news and no good news. Some large number of folks didn't turn up today. So with the pools that have gone out to the criminal trials, there are only now about 40 potential members available. That number will increase as time goes by. The people returning will be the people eliminated from the other trials, so our chances of them being available diminishes somewhat. I think the thing to do is -- though it will build inefficiency in -- is to bring the

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1 40 people over, start, and see how far we can get, and then I
2 will have to go through the questionnaire again when we get an
3 influx of pool members in the event that I can't find 16
4 qualified people in the 40. That's my suggestion.

5 The other alternative is to wait basically until after
6 lunch when I think we might be able to get up to 60 people.
7 But as I say, although the number will be increased, that pool
8 is of diminished likelihood of success. By the time we can get
9 everybody back from lunch and the like, it probably wouldn't be
10 until, realistically, 1:30 or 2:00 before we get started.

11 If you have a different view, I'm happy to hear it. I
12 think the thing to do is to get started with 40 and see how we
13 do.

14 MR. BEUS: Your Honor, you're the boss. We will do
15 whatever you want.

16 THE COURT: If only the Jury Department had felt the
17 same way.

18 MR. BEUS: You're not completely the boss, then.
19 Sorry.

20 THE COURT: What do you think, Mr. Haveles?

21 MR. HAVELES: Your Honor, obviously, it would be
22 time-consuming to have to repeat, but we think 40 is probably
23 enough to get started, and we may not have that much left to
24 do. Let's take advantage of the time rather than waiting. If
25 we don't get started until 2:00, there is a good shot jury

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1 selection continues into tomorrow.

2 THE COURT: I think there is a decent shot of that, in
3 any event. I only have 24 people to lose. For the length of
4 trial, that could well happen. We will see, but we will bring
5 the 40 available folks over. We will get started. I will
6 break in about an hour and change for lunch, and we will see
7 what we can get done. All right?

8 Why doesn't everybody take five minutes, but just take
9 five minutes, use the facilities, come back, and we'll get
10 started.

11 (Recess)

12 (Continued on next page)

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1 THE COURT: Ladies and gentlemen, thank you so much
2 for your patience. I appreciate it. We are prepared to
3 announce the members of the jury. So what we are going to do,
4 my deputy is going to read the names of the ten folks who have
5 been selected and we will ask that you kind of do, I like to
6 call it the jury shuffle where the folks whose names are called
7 take the seats that we designate and those whose names are
8 passed over, if you could just step out of the box and move
9 into the well of the courtroom.

10 As soon as we do that and have our ten individuals who
11 have been selected seated, I am going to ask for everyone's
12 patience for just a few moments longer, I'll check that our
13 process is done, and anyone who has not been selected, you'll
14 get your cards from Ms. Nunez and return to the jury assembly
15 room.

16 I will now ask Ms. Nunez to read names of our jurors.

17 THE DEPUTY CLERK: Juror number 1, Robert Barnett;
18 juror number 2, Bonnie Conklin.

19 THE COURT: If the folks between Mr. Barnett and
20 Ms. Conklin can just move out to the well of the courtroom,
21 please.

22 THE DEPUTY CLERK: Juror number 3, Eduardo Sullano;
23 juror number 4, Jose Marrero; juror number 5, Emmanuel
24 Omoregie.

25 THE COURT: We will have the next juror sit in the

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1 second row, first seat.

2 THE DEPUTY CLERK: Juror number 6, Eugene Casiano. If
3 you wouldn't mind, sir, moving to the first seat in that row;
4 juror number 7, Dorota Gonera; juror number 8, Sufiyan Qureshi;
5 juror number 9, Josefina Reyes; and juror number 10, Patrick
6 Milando.

7 THE COURT: The folks whose names have not been
8 called, if you could just step back to the courtroom for a
9 moment. I will meet counsel at the side for a moment.

10 (At the side bar)

11 THE COURT: Counsel, any further objections or
12 concerns to be expressed?

13 MR. BEUS: We have gone through all the slides. I
14 don't think there will be any surprises.

15 THE COURT: For the jury selection, before I let
16 everyone go, plaintiff is okay?

17 MR. BEUS: Almost. But you're the boss.

18 THE COURT: No objections?

19 MR. BEUS: No objections.

20 MR. PARK: No objections.

21 THE COURT: Why don't I give you a few moments to set
22 up and let Sayra deal with the logistics of getting everybody
23 out. We will start in about five minutes.

24 MR. BEUS: I would like to use two easels. Do you
25 have a preference of where they go? I have copies for

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1 everybody and they will also show up.

2 THE COURT: Where do you want to put them?

3 MR. BEUS: I was going to move the Elmo and put it
4 right there where it's easier for them to see, and I was going
5 to put the other one next to it.

6 THE COURT: That's fine.

7 MR. BEUS: Thank you.

8 (In open court)

9 THE COURT: To the members of the jury I thank you
10 very much. I am going to speak with you in just a few moments
11 about instructions, and the schedule that will get us out of
12 there certainly by 5:00 or earlier today.

13 To the folks who have not been selected, we couldn't
14 do this process without you, so I'm grateful for your
15 participation. You will get your cards from Ms. Nunez and you
16 will return to the jury assembly room for further instruction.
17 I'm thankful. The appreciation of the Court and the parties.
18 If you have not been selected, you are excused.

19 Members of the jury, we are going to take about five
20 minutes for the lawyers to get set up. I am going to give you
21 a few moments of preliminary instructions. We are going to
22 hear one set of opening statements and then we will be done for
23 the day.

24 Five minutes and then we will get everyone. Thank
25 you.

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1 (Recess)

2 THE COURT: Counsel, I'd like to proceed with my
3 preliminary instructions to the jury. Okay for plaintiff?

4 MR. BEUS: Yes. Thank you, your Honor.

5 THE COURT: Ladies and gentlemen, you have been
6 selected as the jury to hear this case. The first order of
7 business is that I will ask my deputy to swear you in as
8 members of our jury.

9 (A jury of 10 impaneled and sworn)

10 THE COURT: Good afternoon, members of the jury. This
11 case is now officially on trial. As I stated earlier, the
12 trial is scheduled to last about three to four weeks. I will
13 keep things moving efficiently and I will stick to the schedule
14 that I set so that you can plan around that schedule.

15 Most mornings we are going to begin at about 9:30.
16 Each day I'll let you know if there is a slight variation from
17 that. It will be later and not earlier.

18 To help ensure that we can start on time, I will ask
19 that you try to get to the jury room a little bit early. And
20 as enticement to that, beginning at about 9:15 each day I have
21 arranged to have some breakfast and coffee for you in the jury
22 room, which you can help yourself to actually beginning about 9
23 each day. If you could get to the jury room a few minutes
24 before 9:30 for sure so we can start on time. We can't begin
25 until everyone is here. And so we will be waiting for folks

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1 and hope to begin promptly each day usually at 9:30 or a time I
2 tell you before.

3 We will take a midmorning break for restrooms and sort
4 of refreshments and a midafternoon break for some restroom and
5 refreshments and about an hour each day for lunch, usually
6 beginning around 12:30, 12:45. We will end each day at 5 or
7 earlier. I promise not to keep you any later than that.

8 Now that you have been sworn let me give you some
9 instructions about your duties as jurors. At the end of the
10 trial I will give you more detailed instructions and those
11 instructions will control your deliberations in this case. For
12 now let me tell you a little bit about how the trial will
13 proceed.

14 The first step in the trial will be opening
15 statements. And first the plaintiff's attorney will make an
16 opening statement, which is simply an outline to help you
17 understand the evidence as it's presented. We will get through
18 that today.

19 Next, the attorneys for the defendants will make an
20 opening statement, and we are likely to pick up with the
21 defendant's opening statement in the morning tomorrow. Opening
22 statements are neither evidence nor will they be legal
23 argument, but a summary of what counsel, an outline to help you
24 understand the evidence that they anticipate will be presented
25 at trial.

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1 After opening statements the plaintiff will present
2 its evidence, their evidence. The plaintiff's evidence will
3 consist of the testimony of witnesses as well as documents and
4 other exhibits. There may also be stipulations of fact, facts
5 that the lawyers for both sides have agreed to which will be
6 read to you as stipulations of fact.

7 In the presentation of evidence the plaintiff's
8 attorneys will examine witnesses and then attorneys for the
9 defendants may also cross-examine them. Following the
10 plaintiff's case the defendant will have additional witnesses
11 and seek to introduce additional documents and exhibits. And
12 counsel for the plaintiff will also have the opportunity to
13 cross-examine any witnesses called by the defendants.

14 After the presentation of evidence is completed, the
15 attorneys will deliver their closing arguments to summarize and
16 interpret the evidence. Just as the lawyers' opening
17 statements are not evidence, their closing arguments are not
18 evidence either.

19 Following closing arguments I'll instruct you on the
20 law and then you'll retire to deliberate on your verdict, which
21 must be unanimous and must be based on the evidence presented
22 at trial. Your deliberations are secret.

23 It is important to remember that this is a civil case.
24 You may have heard of the notion of beyond a reasonable doubt.
25 That is the standard in criminal cases. That requirement

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1 doesn't apply to a civil case and you should put it out of your
2 mind. In civil cases the burden is different and it is called
3 proof by a preponderance of the evidence. To establish facts
4 by a preponderance of the evidence means to prove that the
5 facts are more likely true than not. I will, however, instruct
6 you fully on the burden of proof after all of the evidence has
7 been received.

8 Let me explain the jobs that you and I perform during
9 trial. I'll decide which rules of law to apply to this case.
10 I'll decide this by making legal rulings during the
11 presentation of the evidence; also, as I told you, in giving
12 the final instructions to you after the evidence and arguments
13 are completed.

14 In order to do my job I may have to interrupt the
15 proceedings from time to time to confer with the attorneys
16 about the rules of law that should apply here. Sometimes we
17 will talk over here at the bench, outside of your hearing. I
18 will keep this as limited as possible. But some of these
19 conferences are necessary. I think that the conferences might
20 take some amount of time. As a convenience to you, I may
21 excuse you from the courtroom so that you don't have to sit
22 idly in the box, and you can take a break and stretch. But I
23 will try to avoid such interruptions as much as possible. The
24 attorneys and I are working hard to make the presentation of
25 evidence as smooth and as efficient as possible. But sometimes

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1 it may be necessary. If that's the case, please be patient and
2 understand that these conferences are sometimes necessary to
3 ensure the fairness of trial and often to make the trial move
4 faster.

5 While I decide the law that applies to this case, you,
6 members of the jury, are the triers of fact. You will weigh
7 the evidence presented and decide whether the plaintiff has
8 proved by a preponderance of the evidence the matters that the
9 plaintiff is seeking to establish.

10 You must pay close attention to all of the evidence
11 presented and you must base your decision only on the evidence
12 in the case and my instructions about the law.

13 What is evidence? Evidence consists of the testimony
14 of witnesses, documents and other things admitted in front of
15 you here as evidence by me, or stipulations agreed to by the
16 attorneys. Some of you may have heard the term circumstantial
17 evidence and direct evidence. Don't be concerned with those
18 terms. You are to consider all of the evidence given at trial.
19 And I'll provide further instruction on that at end of the
20 proceedings.

21 Certain things, though, you should bear in mind now
22 are not evidence. And here is a list of things that are not
23 evidence: First, arguments, statements and questions by
24 lawyers are not evidence, nor are statements I make or
25 questions I may ask of a witness.

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1 Second, objections to questions are not evidence.
2 Lawyers do have an obligation to make an objection when they
3 believe evidence being offered is improper under the rules of
4 evidence. You shouldn't be influenced by the objection or my
5 rulings on them. If the objection is sustained, ignore the
6 question and any answer that may have been given. If I
7 overrule the objection, treat the answer like any other. If I
8 you're instructed that some item of evidence is received for a
9 limited purpose only, you must follow that instruction.

10 Third, testimony that I have excluded or told you to
11 disregard is not evidence and shouldn't be considered by you.

12 Fourth, anything you may have seen or heard or may see
13 or hear outside the courtroom is not evidence and must be
14 disregarded. You are to decide the case solely on the evidence
15 presented here in this courtroom.

16 There is no formula to evaluate testimony or exhibits.
17 For now, suffice it to say that you bring with you into this
18 courtroom your experience and background of your lives. Don't
19 leave your common sense outside the courtroom. The same types
20 of tests that you use in your everyday dealings are the tests
21 that you should apply in deciding how much weight, if any, to
22 give evidence in this case.

23 The law does not require you to accept all of the
24 evidence admitted at trial. In determining what evidence you
25 accept, you should make your own evaluation of the testimony

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1 from each of the witnesses and exhibits that are received in
2 evidence. It is essential, however, that you keep an open mind
3 until you have heard all of the evidence in the case. A case
4 can be presented only step by step, witness by witness, piece
5 of evidence by piece of evidence before all of the evidence is
6 before you.

7 As you know from your experience, you can hear one
8 person give his or her version of the event, think it sounds
9 very impressive or compelling and, yet, upon hearing another
10 person's version of the same event, or even the same person
11 cross-examined with respect to the event, things may seem very
12 different. In other words, there may be another side to any
13 witness' story. You should use your common sense and good
14 judgment to evaluate each witness' testimony based on all of
15 the circumstances. Again, I want to emphasize, keep an open
16 mind until the trial is over. You shouldn't reach any
17 conclusions until you have all of the evidence before you and
18 my instructions to you.

19 Finally, let me caution you about certain rules and
20 principles governing your conduct as jurors in this case.
21 First, you must not talk to each other about this case or about
22 anyone who has anything to do with the case until the end of
23 the case, when you go to the jury room to decide on your
24 verdict. The reason for this requirement is that you must not
25 reach any conclusion on the claims or defenses, as I said,

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1 until all of the evidence is in. You are going to keep an open
2 mind until you start your deliberations together at the end of
3 the case.

4 Second, don't communicate with anyone else about this
5 case or with anyone who has anything to do with it until the
6 trial has ended and you have been discharged as jurors. Anyone
7 else includes members of your family and your friends, so don't
8 communicate about the case on Facebook, Twitter, Google, blogs,
9 you name it. You can tell, of course, your family and friends
10 that you are a juror in a civil case and the schedule for the
11 case, but please don't tell them anything else about it until
12 you've been discharged by me.

13 Third, don't let anyone talk to you about the case or
14 about anyone who has anything to do with the case. If any
15 person should attempt to communicate with you about this case
16 at any time throughout the trial, through any means, either in
17 or out of the courthouse, you must immediately report that to
18 me by telling my deputy, Ms. Nunez, and no one else. When I
19 say report that communication to no one else, I mean you
20 shouldn't tell anyone, including your fellow jurors. Just let
Ms. Nunez know and she will convey the information to me.

22 To minimize the probability of any such improper
23 communication it is important that when you come into the
24 courthouse each morning you'll go straight to the jury room
25 which Ms. Nunez will show you at the end of the day. Just come

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1 straight into the jury room for the duration of the trial. And
2 she will show you what that bathroom facilities to use and get
3 you everything you need to be situated this that room for
4 coming in and out of the courthouse.

5 As you were already probably told, you may not use the
6 cafeteria in the building and you shouldn't linger in the
7 public areas of this courthouse on the floor or elsewhere. We
8 will get you everything you need in the jury room and please
9 just come straight there.

10 Fourth, once again, do not do any research or any
11 investigation about the case or anyone who has anything to do
12 with this case on your own. No visiting places described in
13 the trial, don't read or listen or watch any news reports about
14 the case on TV or in newspapers or on online, or anywhere.
15 Don't go on the Internet and don't use digital or communication
16 devices to see what you can learn about the case yourself.
17 This is because your decision in this case must be made solely
18 on the evidence that I receive at trial, that's presented to
19 you at trial. Everything you need to know will be presented
20 here in open court by very capable counsel who represent the
21 parties. I do expect you to inform me immediately, again,
22 through Ms. Nunez, if you become aware of another juror's
23 violation of these instructions. This will make the trial fair
24 and it will ensure that we have no delays in finishing our work
25 here.

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1 Finally, each of you has been given a notebook and a
2 pen. I do permit jurors to take notes. You may take notes,
3 but you don't have to take notes. Notes are just an aid to
4 your own recollection.

5 The court reporters in this case will record
6 everything that's said in the courtroom and any portion of the
7 testimony can be read back to you during your deliberations.
8 If you do take notes, be aware that note taking may distract
9 you from something important that's happening on the witness
10 stand. And whether or not you take notes, rely on your own
11 recollections and don't be influenced by the fact that another
12 juror has taken notes. If you do take notes, all notes must be
13 left each day in the jury room. Ms. Nunez will make sure that
14 they are secure.

15 From this point until the point when you retire to
16 deliberate it is your duty not to discuss this case, not to
17 remain in the presence of other persons who may be discussing
18 this case. In that regard please understand that the parties
19 and counsel in this case have been instructed by me to have no
20 contact with any of you. If you happen to see any of them
21 outside the courtroom and they don't acknowledge you, make any
22 kind of small talk, even say hello, please take no offense.
23 They are not being rude. They are following my instructions.

24 That concludes my preliminary instructions to you and
25 now we will begin with the initial stage of the case, which, as

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1 I said to you, is opening statements. We are going to begin
2 with the plaintiffs. At this time I am going to ask all of you
3 to give your undivided attention to Mr. Beus, who will make the
4 opening statement on behalf of the plaintiff.

5 MR. BEUS: Thank you, your Honor.

6 THE COURT: Thank you.

7 MR. BEUS: Thank you for being jurors in this case.
8 We will do our best and move it along. We will attempt to try
9 to make it interesting.

10 Would you put up C for me, Bart.

11 This is what we are talking about. This is the
12 facility on the south end of the Great Salt Lake outside of
13 Salt Lake City, Utah.

14 Would you blow that up for me one time.

15 Here is the plant we are talking about.

16 Would you put up B for me, please.

17 Let me just get you oriented here. Here is a shot
18 from the top. What you see there, we are going to be talking
19 about a lot in this lawsuit, are some ditches. You'll see that
20 ditch, you'll see that ditch, you'll see that ditch. Then
21 you'll see here at the top what you call the Red River. That's
22 where we say and the testing shows that there are environmental
23 contamination. Environmental contamination is not the only
24 thing this case is about. Let me start with who the plaintiff
25 is.

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Opening - Mr. Beus

1 Would you put up No. 1 for me, please.

2 Who is Lee Buchwald. He was appointed by a federal
3 judge, a bankruptcy judge right here in New York, as the
4 trustee of Renco Metals and MagCorp. The creditors petitioned
5 to appoint a trustee. What you are going to hear in this case
6 is that there are a lot of creditors who are owed a lot of
7 money that was never paid by MagCorp or Renco Metals. There is
8 an argument about how much, but it is in the hundreds of
9 millions of dollars.

10 Mr. Buchwald seeks -- after he was appointed he did
11 his investigation to determine whether or not claims should be
12 brought. We seek the return of \$118 million that was taken by
13 Mr. Rennert and Renco Group from this company when we claim
14 they didn't have adequate capital or they were insolvent.
15 That's what this case is really about.

16 On the right you see that schematic Renco Group is the
17 holding company. It means they own all of the stock in Renco
18 Metals. Renco Metals owns all of the stock in a company we
19 called MagCorp, and that's all you have to do. We are going to
20 call Renco Metals and MagCorp just MagCorp. They both went
21 into bankruptcy in 2002.

22 Put up No. 2, please.

23 Who was the defendant, Ira Rennert? He's a very smart
24 man. He did a doctoral dissertation in finance at NYU. He
25 received a master's of business administration from NYU. He is

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Opening - Mr. Beus

1 the controller of Renco Group, the chairman of Renco Group at
2 the time. Before bankruptcy he was the chairman of Renco
3 Metals. He was also the chairman of MagCorp.

4 You see the word Sabel. That was another small entity
5 that was owned by Renco Metals in Alabama. It was sold in 2000
6 and we will talk about that in a few minutes. Doesn't play
7 much of a role, but a little bit.

8 Mr. Rennert owns 95.8 percent of the Renco Group. The
9 rest are owned by others closely associated with them. There
10 is not really a dispute in this case that Mr. Rennert was the
11 sole decision maker of Renco Group, Renco Metals, and MagCorp
12 through all of the time we are talking about here.

13 Put up 3, please.

14 Who is MagCorp? It was a company, a Delaware company
15 that was formed in 1989 to buy a company called AMAX. The
16 facility I showed you was not built by Renco, MagCorp, or any
17 of those companies. It was built in 1972 by a company called
18 NL Industries. They had a lot of problems. They eventually
19 sold it to AMAX. And AMAX was sold to MagCorp. MagCorp was
20 formed in order to buy AMAX.

21 We have talked about the bankruptcy. What this plant
22 does is, it takes brine out of the Great Salt Lake which is
23 full of magnesium. The problem with this, and I want you to
24 remember this, and there is really not a dispute, with that
25 brine are a lot of other minerals -- iron, sulfur, boron, and

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Opening - Mr. Beus

1 lithium -- and it created all kinds of problems to make this
2 plant ever work.

3 Next, please.

4 Who are the New York defendants. Mr. Fay, who was the
5 chief financial officer of Renco Metals; Mr. D'Atri,
6 Mr. Sadlowski, and Mr. Ryan, lawyers. They worked together to
7 put together \$150 million of debt on MagCorp, and they could
8 never get out from under that \$150 million of debt. That \$150
9 million of cash where they borrowed the money came into MagCorp
10 and then \$118 million of it was taken. I'll take you through
11 the detail of that in a few minutes.

12 When that 150 million -- actually, long before that,
13 in fact -- MagCorp was doomed to failure. It didn't have the
14 equipment that could process these contaminated brines out of
15 the Great Salt Lake. Nobody had ever really been successful
16 with that plant. NL Industries wasn't, AMAX really wasn't, and
17 when purchased by MagCorp, it didn't do well either.

18 Next.

19 Who are the Utah defendants. Those are the officers
20 of MagCorp that ran the company and there was a unique set-up
21 that occurred. Mr. Rennert in 1993 decided to give what's
22 called net worth appreciation payments to these officers, each
23 of the names you see up there. Mr. Legge was the CEO.
24 Mr. Rennert was the chairman. The other folks were
25 vice-presidents and you will come to know their roles more

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Opening - Mr. Beus

1 thoroughly in this trial.

2 But the net worth appreciation payments were payments
3 that said, if we declare a dividend and send the dividend up to
4 Renco Group, you will get a percentage of that dividend.
5 Mr. Rennert, for example, got 3 percent. Every time there was
6 a dividend that went out of MagCorp upstream, which eventually
7 got to Mr. Rennert and the Renco group, they got a percentage,
8 nearly \$7.2 million of net worth payments. The testimony in
9 this case will be that not one of these officers ever once
10 disagreed with Mr. Rennert.

11 Next.

12 What happened to these dividends. The dividends were
13 taken. The biggest dividend was in 1996. Over \$75 million was
14 taken. That dividend was taken four months later, went up to
15 Renco Group. Four months later they formed a company called
16 Blue Turtle. Blue Turtle, a couple of months later, purchased
17 a very large parcel of property in the Hamptons, at Sagaponack.
18 There Mr. Rennert, really Renco Group, built the largest
19 occupied house in the United States of America: 29 bedrooms,
20 two bowling alleys, 157-seat theater, and it goes on and on.

21 Here is that house on a 60-acre parcel.

22 Put up the next slide.

23 You'll see another slide of it. These houses, by the
24 way, right here are not his. This is the property. There is
25 another view of it.

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Opening - Mr. Beus

1 It's those monies that were improperly taken from
2 MagCorp that Mr. Buchwald, the trustee, the court-appointed
3 trustee, is asking you to return so that they can go back to
4 the bankruptcy estate and pay the creditors, the people that
5 loaned MagCorp money. They have not got a single penny on
6 significant amounts that they loaned to this company since
7 2001. That's a very long time. I have a board.

8 THE COURT: Mr. Beus, make sure if you are talking
9 you're at the mic so we can hear you.

10 MR. BEUS: I appreciate that.

11 Here is a simple board that gives you the timeline of
12 when the \$118 million was taken. You see The Renco Group forms
13 MagCorp in order to buy AMAX. They paid \$44 million for it.
14 They also paid some money for some working capital. In 1993,
15 they go out and borrow \$75 million. One of the things I want
16 you to understand, this purchase price of \$44 million wasn't
17 all cash. \$12 million of it was a promissory note. Kind of
18 like if you buy a car, you put the down payment. This was a
19 big down payment.

20 There was \$12 million that was a promissory note.
21 That means we are going to pay you over a period of time. They
22 were supposed to pay \$2 million a year. They got security for
23 it. If you don't pay the \$12 million, the seller of AMAX then
24 can take the entire facility back, secured with all of the
25 stock that they bought.

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Opening - Mr. Beus

1 Think about that. What happened in 1993. MagCorp was
2 behind on that \$12 million note. They couldn't pay it.
3 Instead of taking the company back, \$13.6 million was then owed
4 with that and some other obligations, and there is no argument
5 about that. I'll show you the documents that are not in
6 dispute in this case. They took a haircut. They went from
7 \$13.6 million to \$7 million. That will describe to you how
8 much trouble this company was in. AMAX didn't want that back,
9 so they took almost a 50 percent haircut.

10 During this '90 to '94 time frame, MagCorp was losing
11 significant amounts of money. Then something wonderful
12 happened to MagCorp. The price of magnesium shot up. We call
13 it a bubble. Call it any word you want. And that occurred in
14 1995. The reason it occurred is some other magnesium
15 competitors went out of business. By the time you get to 1996,
16 the price is dropping, it shoots up, and then it starts back
17 down early in the year, 1996. Even in the end of '95 it's
18 starting back down.

19 The price is dropping. But what happens here is \$150
20 million is borrowed. They go to the marketplace and they
21 borrow \$150. Not one penny of the principal of that \$150
22 million has ever been paid back. Not one.

23 The cost to do that borrowing, and I am going to show
24 you in a minute, is a little over \$105 million. That includes
25 some dividends that were taken out of those monies.

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Opening - Mr. Beus

1 Then this is where you see the \$118 million taken,
2 right here through this period up through October of '98.

3 When you get to the '96, '97, '99 time frame, if you
4 put C back up for me, this facility -- that's okay. I'll go
5 back to this. I'll just tell them about it. This facility,
6 you see those buildings. What's inside those buildings. And
7 you are going to see some models in this case -- I won't take
8 the time in my opening -- where they take the brine from the
9 Great Salt Lake, they evaporate it back to where they have
10 magnesium chloride and get all the purities out of it and then
11 put it in a melt reactor, raise the temperatures to between 700
12 and 1400 degrees. Through that they have an electrolytic cell,
13 and you will understand all of this because you will hear from
14 one of the scientists that put this together.

15 In the process of going up and down those temperature
16 ranges, this plant creates really nasty environmental problems
17 called chlorinated hydrocarbons, and there are a lot of them:
18 Dioxins, furans and so on. The Clean Air Act that was
19 promulgated was coming. There was a lot of chlorine emissions
20 and they knew they had to get better equipment. They had a
21 technology problem. The technology that they acquired in 1989,
22 which was put in place in 1972, when NL Industries built
23 this --

24 MR. PARK: Your Honor, we don't know what he's
25 pointing at. We don't have a picture up. Is there some way we

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Opening - Mr. Beus

1 can position that?

2 THE COURT: Mr. Beus, can you use your pointer? Will
3 it reach the screen?

4 MR. BEUS: Yes, it will.

5 MR. PARK: Thank you.

6 MR. BEUS: I apologize.

7 THE COURT: It's okay.

8 MR. BEUS: I guess we are having a little trouble
9 getting this up. We gave you a small copy of this.

10 MR. PARK: I just want to see where you're pointing.

11 MR. BEUS: I will talk about the year when I'm
12 pointing to the year. 1972 is not on this.

13 The technology in this plant came from Germany in the
14 1930s. It's called IG Farben technology. I am going to spend
15 a little more time with that.

16 They are searching the world to find other technology.

17 They find a company called Alcan, Aluminum Company of
18 Canada. And what they want to do is, they want to license this
19 and they know they have got to have new technology to meet the
20 Clean Air Act. They know they have got to have technology to
21 solve environmental problems. And equally important, they know
22 they have got to have technology to stay in business. You are
23 going to hear in this case, without new technology they
24 couldn't save the business. You see the IG Farben and the
25 sealed cells. In order to continue in business, that they had

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Opening - Mr. Beus

1 to modernize in order to save the business.

2 In Alcan, in October of '96, about the same time,
3 shortly thereafter, that they take the \$105 million, it costs
4 \$105 million, they then think they have got an answer. But
5 Alcan doesn't work. Alcan had only been working one place in
6 the world, at a titanium factory in Japan. And that feed or
7 brine -- which really wasn't brine. It was feed -- was pure
8 magnesium chloride, MgCl₂. The brine out of the Great Salt
9 Lake had all of these contaminants: Boron, sulfur, lithium,
10 and iron. And lithium and iron were the biggest problems.
11 They spent three years trying to figure out Alcan and they
12 couldn't.

13 All the time they were trying to figure that out,
14 knowing that they had to have a major input in cash in order to
15 build this facility, they were taking dividends out and taking
16 MagCorp not only to an insolvency, but below insolvency.

17 Let me show you 32, if you would, please.

18 Here is what happened. With a discounted AMAX note --
19 so I have taken the AMAX note out of this number right here,
20 1993. From 1990, they bought it in August of '89, but the
21 first year is '90 through '94. Those five years, they lost a
22 total of \$26.6 million.

23 33. Here is where I told you. This is right out of
24 their financial statements of the prospectus when they got the
25 '93, \$75 million. They tell you this amount, the same AMAX

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Opening - Mr. Beus

1 note I told you about, 10 million, this amount represents a
2 subordinated note payable to AMAX, which is carried as
3 long-term debt on the company's financial statements. The
4 company has negotiated to purchase such note and accrued
5 interest and \$3.6 million of other related obligations for \$7
6 million. Use your common sense, as the judge told you, when
7 you think about why AMAX would take 7 million as opposed to
8 13.6.

9 Put up No. 8 for me.

10 Here is what happened to the prices. And this
11 evidence, all of the underlying documents are stipulated. Here
12 is what happens to the spot price of magnesium. You see in
13 '93, it pops up there in '94 and '95. Then it drops way off.
14 That's a spot price that the world deals with. The green line
15 is MagCorp's actual numbers, what they are actually receiving.
16 The evidence in this case will tell you that they are getting
17 about 90 percent of spot price.

18 With that bubble they go to the marketplace to borrow
19 this \$150 million. We will come back and you'll see what they
20 have done. As they have said, they can forecast the price of
21 magnesium at this price for seven years the entire time that
22 they are supposed to be paying back the \$150 million. They
23 never once set a dollar aside, not one dollar was ever set
24 aside to pay that \$150 million. You will hear from Mr. Haveles
25 that they had a lot of cash. And when you hear that, ask if

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Opening - Mr. Beus

1 they had any cash that comes even close to doing the \$150
2 million payback. They didn't.

3 Put up 9.

4 Here is the forecast they used to do it. Let me tell
5 you what the testimony will be in this case. The testimony is
6 you maybe can forecast the magnesium, which is very volatile
7 for maybe six months, maybe a year, but MagCorp, Renco Group,
8 they are all in the commodities business, will tell you, and
9 Mr. Rennert himself will tell you that any kinds of projections
10 are speculative.

11 10. Mr. Rennert will testify that any projections are
12 speculative. Mr. Kaplan, who has a Ph.D. and is vice-president
13 of sales, forecast is good for six months. And Mr. Legge, the
14 CEO, the Utah CEO who ran this, who was in charge of this
15 plant, will tell you that MagCorp needs \$1.60 to survive, \$1.60
16 a pound. Keep that number in your head because it will tell
17 you how much trouble they were in.

18 Here is a summary chart of where the cash was taken.
19 This was taken in '95, this was taken in '96, this was taken in
20 '97, this was taken in '98, and in '99. This \$1.2 million is a
21 fee. I'll talk about that in a few minutes. The Renco
22 Group --

23 MR. PARK: I am going to ask Mr. Beus to use the
24 pointer on the screen that we can all see. I cannot follow
25 where he's pointing.

F22MBUC3

Opening - Mr. Beus

1 THE COURT: Mr. Beus, either point to the screen or we
2 need to shift.

3 MR. BEUS: I apologize.

4 Every year Renco Group took \$1.2 million to stay
5 informed and provide management services from MagCorp. The
6 rest of the numbers you see on that chart are when they receive
7 dividends. The dividends total, and there is no dispute in
8 this case, of \$102 million. There were some preferred stock
9 that was redeemed, \$8.5 million, net worth appreciation
10 payments to the officers in Utah, never disagreed with
11 Mr. Rennert, of \$7.1 million. And then the management fees
12 over this five-year period of \$6 million.

13 Let me show you now the prospectus where they got this
14 \$150 million. That's the document they filed with the SEC to
15 say, come and loan us money.

16 Put up No. 11.

17 There is the front page of it. This is \$150 million
18 offering.

19 Put up No. 12.

20 Here is the cost of doing that offering. You see they
21 are going to retire the existing notes. They had to pay a
22 premium. So if you take the premium they paid, this shows 88.
23 Some of those notes didn't actually redeem. So the premium was
24 a net effect of \$9.94 million after a big portion of the 75 was
25 paid off.

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Opening - Mr. Beus

1 Then you see the dividend of the group, 75, stock
2 redemption 8 and a half. The net worth appreciation payments,
3 5.3. And the transaction fees and expenses. When you total
4 those numbers up, just using the premium piece of this, it was
5 \$105.4 million. That burden on this company was a burden that
6 could never be survived.

7 Put up 13.

8 I want to show you this. This is a memo to
9 Mr. Rennert, the chairman of Renco Group, from Mr. Legge, the
10 CEO of MagCorp. He says in this document, which there is no
11 objection to, a basic business MagCorp premise is that future
12 magnesium marketing price will remain in the \$1.60 per pound
13 range, average for all MagCorp products, in order to provide
14 sufficient funding. Look at next two words. To survive, to
15 survive.

16 Now, put up No. 18.

17 There will be no dispute in this case that all of
18 those dividends that were taken, and that stock redemption,
19 provided no benefit whatsoever to MagCorp. And that will be
20 important for one of our legal theories that I'll talk about in
21 a few minutes.

22 19.

23 What was left after they went out and borrowed this
24 \$150 million? This comes right out of the prospectus. This is
25 what's left. Before, you've got cash of 32 million. After,

F22MBUC3

Opening - Mr. Beus

1 you've got cash of 547,000. The old notes of \$75 million goes
2 to zero. You see the line there. The new notes go to \$150
3 million.

4 I want you to look at this next line. The total
5 stockholder's equity goes from a positive \$11.8 million. And
6 when you see a number that has brackets around it, that means
7 you're under water by \$81 million. You're broke by \$81
8 million. You have got to find \$81 million before you get to
9 ground level zero. That's what those brackets mean.

10 These statements are not fair value. Fair value may
11 be something different, fair market value on what these assets
12 are worth. But what it is, it is what generally accepted
13 accounting principles say and this is what you report. They
14 are upside down \$81 million as soon as they pay the \$105.4
15 million that I just described. There are no disputes about
16 that. That's what happened. That's what was reported.

17 They will show you a lot of statistics saying we have
18 got all of this cash. I showed you the facility. When you
19 say, what does it cost to operate that facility, it costs
20 \$400,000 a day, \$400,000 a day. That's arithmetic that they
21 reported.

22 Put up 20 for me. I've done the arithmetic here.
23 This is right out of the financial statements. In '96, it's
24 400,000 and change a day. When they say, gee, we have got the
25 ability to borrow 20 or \$30 million or we have got 20 or \$30

F22MBUC3

Opening - Mr. Beus

1 million dollars of working capital, divide that by 400,000, and
2 they maybe got 30, 60 days to survive if they don't get any
3 more money in.

4 21.

5 As I told you, the bubble was bursting in late '95,
6 early '96. The price was coming back down. Now you get to
7 1997, and this is just one of several of these. This is from
8 Mr. Ogaard. Mr. Ogaard was the chief financial officer of
9 MagCorp, the company operating in Utah. It was written to
10 Roger Fay, the chief financial officer of Renco Metals and
11 Renco Group.

12 Here is what is said. While 2 million -- and this is
13 doing some calculations of how they can do it based upon
14 whether they are making money -- while 2 million is currently
15 available for dividend, with projected negative cash strain in
16 '98 and '99, that's the projections as of this very date, 31
17 October, negative cash train in '98 and '99, from new
18 generation cell CapEx costs.

19 Let me take a minute with the word CapEx. That's a
20 term you are going to hear a lot. CapEx means that's the
21 amount of money we need to spend to upgrade the equipment. We
22 got to buy new equipment. We have got to have new technology
23 and that's a CapEx. Now it's called capitalization expense.
24 This is the short version.

25 So we got to have new generation cell CapEx costs.

F22MBUC3

Opening - Mr. Beus

1 Then the next term is, we urge extreme caution. After the
2 chief financial officer warns and says, use extreme caution,
3 you know what they do? They take yet another dividend. They
4 take \$6.6 million of additional dividends with that information
5 that they are talking about between the two chief financial
6 officers.

7 22.

8 The next year, '98, and things are not going well now.
9 While 2 million -- and this is the next year. They say the
10 same thing, only it's a little different. While \$2 million is
11 currently available for dividend with projected negative cash
12 drain, over the next three years, with CapEx costs together is
13 price declines, we urge extreme caution.

14 What did they do? They took another seven plus
15 million dollars in dividends. This company was doomed for
16 failure.

17 Now, the bottom line is, Mr. Rennert made a bad
18 decision when he bought the company in '89. The brine out of
19 the Great Salt Lake is never a place where you ought to be
20 building a plant to take magnesium.

21 But he doesn't take responsibility for that bad
22 decision. Instead, he goes and borrows this money, pays \$44
23 million, and then starts pulling out, eventually pulls out \$111
24 billion in dividends and stock redemptions. Mr. Rennert had an
25 obligation to what he was doing. There is a contract in place.

F22MBUC3

Opening - Mr. Beus

1 It's a written contract.

2 Would you put up 29.

3 August of '93. Here is the contract. This is with
4 Renco Group. Remember, that's the parent company that owns
5 Renco Metals and MagCorp. The consultant shall -- this means
6 the chairman, Mr. Rennert -- shall become generally informed
7 and keep itself informed as to the business and affairs of the
8 corporation. The corporation there is MagCorp, the company
9 that's operating in Utah. And its subsidiary corporations.
10 And general business developments in their industries.

11 30. For that they are going to receive \$1,200,000 a
12 year, \$100,000 a month.

13 Here is what you are going to hear from Mr. Rennert in
14 this case.

15 Put up 39 for me, would you please.

16 You are going to hear that he did not recall Renco
17 Group's reasons for doing the \$150 million offer. That's what
18 he was going to say. He doesn't know why he did it. He
19 doesn't know any role in assisting. And he did not know the
20 \$150 million offering doubled the amount of MagCorp's debt.

21 We are going to be asking you in this case to use your
22 common sense and can anybody who is taking in \$111 million and
23 doesn't know what you see on this board could possibly be doing
24 his fiduciary duty. He didn't know that the stockholders'
25 equity was negative \$80 million. That was printed in the

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Opening - Mr. Beus

1 prospectus, which was filed with the Securities and Exchange
2 Commission. That's what you are going to hear in this case.

3 Next.

4 You are going to also hear that Mr. Rennert believes
5 that all projections are speculative. You are also going to
6 hear, and I don't want to belabor this, but you are going to
7 hear, although Mr. Rennert says he never saw a Houlihan
8 Lokey -- that's a company that says everything is solvent.
9 What Houlihan Lokey says, we are going to take management's
10 projections, which says we are going to have a \$1.78 a pound
11 for magnesium over seven years. They don't do any independent
12 investigation. They don't find out whether that's true. They
13 don't even find out whether they can forecast. And the
14 testimony in this case is going to be, once you are beyond a
15 year to try to forecast the price of magnesium, you just can't
16 do it.

17 But what happens. You are going to hear from an
18 expert in this case. With what I have just described to you so
19 far, that expert is going to say, we used a discounted cash
20 flow and comparable company valuations that gets you to over
\$300 million of value in this company. Makes no sense.

22 How does he do that? He says I am going to take seven
23 years of projections, which MagCorp, Renco Group, Renco Metals
24 all say, you can't do anything more in a year in a volatile
25 industry. And then I am going to compare this company and use

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Opening - Mr. Beus

1 comparable analysis with like Alcoa Company of America, big
2 large multibillion dollar diversified companies. Use your
3 common sense when you hear that.

4 Mr. Rennert himself says, discounted cash flow and
5 comparable company valuations are not meaningful. He never did
6 his own valuation of the assets or liabilities when taking
7 dividends. He never saw and did not rely on this Houlihan
8 solvency opinion. That's what you are going to hear in this
9 case.

10 Next.

11 And he didn't know if MagCorp had a surplus to declare
12 dividends. He didn't know whether the dividends were lawful.
13 We are going to be asking you to look at the Delaware statutes,
14 because this is a Delaware company, as to whether those
15 dividends were lawful. And he didn't have any knowledge of
16 MagCorp's solvency when taking the dividends. He didn't know
17 if they were solvent. If they were insolvent or they were
18 rendered insolvent when they take the dividend, they have to
19 give it back. That's what we are asking for. Put the \$118
20 million back.

21 34. I'm sorry. Put up 23 first, would you, please.

22 Here is what we claim in this case. I've given you
23 some background. And these aren't all of our claims, but these
24 are the claims that I would like to at least discuss with you
25 during opening.

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Opening - Mr. Beus

1 Three claims. One, unjust enrichment. Did
2 Mr. Rennert get a tangible benefit? You saw the photograph of
3 the house. That's where he and his wife live. Still owned by
4 Renco Group. The money that went into Renco Group financed
5 that.

6 Was MagCorp harmed by the money being taken out?
7 There is no argument about that. So that in and of itself
8 says, make him pay back the \$118 million. Or was there
9 inadequate capital? Is that company doomed to fail when it got
10 to huge burden? Indeed it was. Even before that it was doomed
11 to fail.

12 Or insolvency. You'll hear a lot about insolvency in
13 this case. Go back and let me see if I can deal with that.

14 Go to 34. Insolvency is a word that I want to make
15 very simple and I don't think there will be anybody that will
16 argue with this. It's a balance sheet analysis. And a balance
17 sheet is really simple. Assets are what you own. Liabilities
18 are what you owe. Every one of us in this courtroom has a
19 balance sheet. We may not have put it on paper, but we do.

20 If you own something, it's an asset. If you so
21 something, it's a liability. If the liabilities exceed the
22 asset, even for one dollar, even if you are making it a whole
23 lot of money, you're insolvent. Let me give you an example.
24 Suppose you have a car. You know what happens when you buy a
25 car when you buy it new. You put a mortgage on it. If you pay

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Opening - Mr. Beus

1 22,000 or \$25,000 for the car and drive out of the parking lot,
2 it's worth 17 or 18 or 19, whatever the number is. If you
3 financed 100 percent of it and that's the only thing you had
4 and your car is worth less than what you owe on that car,
5 you're insolvent. You may be making some money, but it doesn't
6 matter whether you are making money. That's irrelevant.

7 It's a balance sheet, what do you own, what do you
8 owe. If what you owe exceeds what you own, you're insolvent,
9 even if by a dollar.

10 Put up 35.

11 Let me take you to what they reported because this is
12 a balance sheet. They give you the bottom number. They say
13 the liabilities under GAAP, generally accepted accounting
14 principle, is a negative \$81 million.

15 Now, let me go to 36. This is the full or nearly the
16 full balance sheet that they report in the report that they
17 filed with the SEC on 31 October '96.

18 (Continued on next page)

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Opening - Mr. Beus

1 MR. BEUS: You see cash, cash, and cash equivalents.

2 Those assets, they are what they are. Then, you get to this
3 line: Property, plant, and equipment. Do you see this number?

4 This is where the argument is in this case. They list
5 property, plant, and equipment at \$65 million if you don't take
6 any depreciation. See this accumulated depreciation and
7 amortization at \$32 million?

8 On generally accepted accounting principle books, you
9 only report an asset of \$32 million because you depreciate it.
10 That depreciation may not be the same as fair value. That is
11 what you get to do for tax purposes. That is what you get to
12 do for generally accepted accounting principles. You lay it
13 out.

14 Now, if you say, let's not have any appreciation and
15 add \$33 million back; if you add \$33 million back and you're
16 already \$81 million in, it doesn't really matter. You're still
17 almost \$50 million insolvent. If you give them credit for
18 100 percent of the value. And I will show you in a few minutes
19 that they all acknowledged that the equipment had serious
20 problems, and they had to put a lot of money into it. I will
21 actually show you some of the documents in a few minutes.

22 Let me go to now the definition of fair market value
23 as described by their expert. Put up 37 for me, would you
24 please. This is their expert who comes up with this
25 \$300-plus million this company is worth when it can't put a

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Opening - Mr. Beus

1 dollar aside to pay the \$150 million notes. Fair market value
2 is determined based upon what both a willing buyer and a
3 willing seller, having knowledge of all material facts about
4 the property, would agree to. That is the essence of common
5 sense.

6 When you look at this property, plant, and equipment
7 and the technology and the environmental liabilities that are
8 associated with it, you ask yourself as you hear the evidence
9 in this case, what would a willing buyer, if they knew
10 everything, actually pay for this company, for that property,
11 plant, and equipment, which is not generating profits and which
12 is creating ongoing environmental liability?

13 We will urge you in this case that -- you will hear
14 from our witnesses -- they will tell you, you wouldn't pay
15 anything.

16 Go back to AMAX. When they took the discount, they
17 didn't want the company back. They took a discount, huge
18 discount.

19 Now go to 38. If we give them credit for everything
20 they put in it and eliminate that \$32 million, they're still
21 insolvent, by their own numbers, by almost \$50 million.

22 Let me tell you what you need to consider -- put up
23 Exhibit 2582, and I don't want to take too much time with this,
24 and blow that up, who it is from and who it is to. I want you
25 to look at this date. It is February 23, 1996. Right before

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Opening - Mr. Beus

1 they do this \$150 million borrowing and right before they take
2 the \$105 million of expense out of this company. Right before
3 they take the \$75 million. Look at these numbers. This is
4 from Mr. Legge, the CEO of MagCorp, to Mr. Rennert himself,
5 with copies to the chief financial officers, Ogaard and Thayer.
6 Now, what it says is a key component of the 1997-1999 business
7 plan. They're planning now what is going to happen in '97 and
8 '99. This is before they have taken out the \$75 million.
9 Business plan and cash flow projections which we plan to
10 present at the March 25 business review is the capital and
11 expense plan for those same years.

12 You'll have this document. You'll be able to see it.

13 A product of the exercise of developing the
14 preliminary capital and expense plan is that we can more
15 clearly see additional reasons for installing the 01 spray
16 dryer scrubber in '96. That is a big piece of equipment that
17 will cost a few million dollars.

18 Given the schedule for the EPA -- that's the
19 Environment Protection Agency -- to promulgate hydrochloric
20 acid, HCL, emissions regulations, both the spray dryer scrubber
21 installations should be completed by the end of 1998.

22 They know they have the Clean Air Act and chlorine
23 emission issues coming, so they have to spend money. They have
24 to spend money for other reasons, too.

25 If the 01 scrubber installation is deferred until 1997

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Opening - Mr. Beus

1 or 1998 -- look at the next words -- we increase our risk of
2 not having the cash available from operations, plus it is
3 questionable as to whether we could install both scrubbers in
4 1998 given our operating rate.

5 What are you hearing before the \$75 million is coming
6 out? They don't even know if they're going to have enough cash
7 to do a scrubber.

8 Let's go to the second page, where you see the numbers
9 laid out for you. Here you see the scrubber right there.
10 They're worried about having the money to do that scrubber.
11 What you see here is a schedule of what they have to do to put
12 money into equipment to keep this company viable. You total up
13 those numbers. This is year 1, 1996; this is year 2, 1997;
14 this is year 3, 1998; this is year 4, 1999. This isn't all of
15 them. You can see the numbers: 14-1/2, 15.9, 23.98, 17.42.
16 In addition, they have got some additional expenses.

17 Go to the second page. When you add those numbers
18 together, what cash they have got to have that they're
19 budgeting in February of '98, before they take a big share of
20 these dividends out, the number totals, \$78-plus million. When
21 you hear tomorrow from Mr. Haveles and you see these numbers,
22 \$40, \$50 million we have, they don't have enough to do this.
23 You know what? They don't get most of it done.

24 Now, let me move back to what was happening at the
25 same time you see this February '96 before they do this

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Opening - Mr. Beus

1 \$150 million borrowing that they load on MagCorp's back.

2 Put up 8 again, would you please. This is the bubble.
3 Here you see the prices coming down starting in late '95; and
4 then in '96, they continue to decline. Now, you see MagCorp
5 numbers are a little bit behind that. Their decline comes a
6 little later. The reason is they have some contracts.

7 Let me say a word or two about their contracts. They
8 have contracts that will help them with pricing. The problem
9 is, is when there is a lower price, the customer comes back and
10 says, we're going to go somewhere else or we're not going to
11 buy it; and by and large, it didn't happen all the time, but it
12 happened a number of times. I'm going to show you some
13 examples of what happens before, again, this big \$75 million
14 dividend that was taken out in July of '96.

15 Put up 46. Here is what is happening to the price.
16 This is in evidence. This is a memo to Mr. Legge from
17 Mr. Kaplan. Magnesium consumption by the West of Eastern
18 material increased in the first quarter. It gives you the
19 tonnage.

20 What you're going to hear from the defendants in this
21 case is the reason there was a huge problem and why they went
22 bankrupt is because China was coming. China was coming. It
23 started coming in '92. It was warned off even here. This
24 reflects increased shipments to the West of Chinese material.
25 A bit more from Russia. Chinese material continues to be sold

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Opening - Mr. Beus

1 at extremely low prices, as shown in the attached press
2 clipping, which is putting significant pressure on both Western
3 and Russian pricing.

4 This is information they're writing to one another.
5 Look at the date. May of '96, 23 May of '96, again before the
6 big hunks of money are being taken out. They have taken some
7 smaller dividends before. Big hunks of money. \$75.7 million.

8 Next. Here is the article that is attached. I'm
9 sorry about the typing on the right. It is ours, so you can
10 read it. Look at the headline: Weak demand makes magnesium
11 price slip. Look at the date, 23 May.

12 Price structure down 40 to 50 cents a pound so far
13 this year.

14 This is before they take the money. The Chinese
15 cranked up the pressure, cutting prices 4.5 cents to a range of
16 \$1.13.

17 Remember what I told you earlier? \$1.60 is the number
18 to survive. To \$1.22 a pound. And this, again, is in that
19 same memo. This is what they knew before they took this money.

20 Next. Here you see some more. Next one, if you
21 could. There you go. Here's more. World oversupply of
22 magnesium in 1996 led to a sharp decline in prices throughout
23 the year.

24 48. Here you see this is a memo from Mr. Legge to
25 Mr. D'Atri, the secretary of MagCorp and Metals. He says, it's

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Opening - Mr. Beus

1 obvious that the import metal is available and many contract
2 customers are throwing that back at us to challenge current
3 contract prices.

4 Remember when I told you there were contracts in
5 place? Well, they weren't such great contracts because holding
6 those commodity prices had problems. Here was one of their
7 very big customers. 6 May '96, this is what is there before
8 they take the hugest dividend of all.

9 Put it up next. This is what you see was attached.
10 This is Alumax. Big customer. Look what he says. This is
11 from Alumax to MagCorp. Due to some competitively priced
12 primary magnesium in the marketplace right now, we need you to
13 put May, June, and July loads for Plant City on hold for now.
14 Confirmation/cancellation of status of those loads will come in
15 due time.

16 They just stopped buying. Why? They can get it
17 cheaper. That information -- and this is not all. There is
18 more.

19 Go to 50. Everybody knows the onslaught of Eastern
20 material created many traumatic problems for Western producers.
21 That's when they got the spike to come.

22 Next. 51. Look at this. 26 August, right after they
23 take the money, this is Mr. Legge, the CEO of MagCorp, from
24 Kaplan, the guy who is in charge of sales, who has a Ph.D., he
25 is writing a paper, and this is what he puts in the paper.

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Opening - Mr. Beus

1 There are large amounts of Eastern material currently sitting
2 in Western ports, creating strong negative price measures.

3 They knew it was coming. Our position in this case is
4 Mr. Rennert paid \$44 million for this company. He had an
5 investment. He made a mistake with the investment. This is
6 how he gets a 200-plus percent return. He just takes the money
7 out and leaves MagCorp to die. It is doomed for failure.

8 Let me show you what we have, and I'm going to do this
9 fast. Put up 55. Here is what we know about China. They
10 flood the market in '92. In '93, they flood the U.S. markets
11 again. '94, the imports continue. '95, they double their
12 production. '96, you saw the article on \$1.13 to \$1.22. And
13 they're making significant discounts.

14 Now, you ask: How do they do that? They don't make
15 the magnesium the same way in China as they do here. Magnesium
16 represents 2.3 percent of the crust of the earth. Readily
17 available commodity. What they do is what they call the
18 pigeon process. They take dolomite where they can get it.
19 They heat it up. They vaporize it. They don't create
20 chlorinated hydrocarbons. They don't have the same problems.
21 They don't have the brine problems. And they just beat the
22 U.S. magnesium producer, namely MagCorp. They just beat 'em
23 up. So China is there.

24 Next. And Russia is there. Russia floods the market
25 in '92. Eastern material creating traumatic problems for

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Opening - Mr. Beus

1 Western Europe. They're again flooding the market. Huge
2 quantities of imports continue. You see these numbers. You
3 see 57,200. The whole market is around 300,000 tons.

4 Now, you see there about duties. MagCorp tried to get
5 duties imposed and, in some cases, they were successful, but
6 they knew they could never get imports on -- this may be more
7 than you want to hear now. MagCorp basically manufactured
8 ingots, solid magnesium pieces. They never got any way to
9 preclude any tariff production on powder, magnesium powder.
10 About 30 percent of MagCorp's business was they would sell the
11 ingot, and the buyer would turn it into powder. So there was
12 never protection on powder, ever. There was also never
13 protection when you put magnesium with another product and
14 called it an alloy and shipped it in. That really didn't work
15 for them. But the competition continues.

16 Next. Canadian competition. And you see the same
17 thing. This is cyclical. They know what's happening.

18 Big plant coming on in Isreal. Put up 58. They're
19 going to get it right. They're putting a 27,500 ton plant.

20 59. New plant considered in Australia. And remember
21 what I said, it is \$1.60 per pound. This company was doomed
22 for failure.

23 Mr. Rennert. Put up 61. Again, you can't project.
24 If you don't project, you can't take the money.

25 62. He claims, and he will claim in this case, that

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Opening - Mr. Beus

1 he didn't know the Chinese prices weren't the \$1.13 you saw.
2 He didn't know Russian and Chinese metal were taking the market
3 with aggressive pricing. He didn't know the Chinese imports
4 were coming from 1995 through 1998, the time they took these
5 dividends. And he didn't know how the Chinese production
6 process worked or what the lead time was. In fact, the
7 testimony in this case will be there were hundreds of Chinese
8 plants, and it wasn't a lot of money to get in it. And they
9 could gear up fast. And some of the MagCorp officials actually
10 went to China to look at it. They knew.

11 So I have told you the price is dropping. Now let me
12 talk about the technology and the equipment that they were
13 stuck with from the 1930s out of Germany.

14 Can you put up E for me. I will try to do this
15 briefly. You can see here that there were I.G. Farben and
16 sealed cells. The I.G. Farben cell, these are big cells, they
17 are the size of this jury box, and they're huge, and you'll see
18 models when you get to the experts in this case. Inside is
19 brick, it is the easiest way to call it. This brick decomposes
20 with all of this heat. The life span of an I.G. Farben -- oh,
21 we have a mistake where it says 8 months. That should say
22 18 months. I apologize. I got a note. I apologize for that.

23 The life of an I.G. Farben cell was about 18 months.
24 It wasn't competitive. It took an enormous amount of energy.
25 It took an enormous amount of labor. And it produced hazardous

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Opening - Mr. Beus

1 material, which creates problems for the Environmental
2 Protection Agency and the environment itself. It emits forty
3 to fifty thousand tons of chlorine, and the Clean Air Act had
4 been passed. The regulations on how much you could actually
5 emit hadn't yet been put in place. As you get through this
6 trial, you will see they were worried about that, and they knew
7 they had to get technology that would deal with that when the
8 Clean Air Act and the NESHAP -- NESHAP is a long word, I won't
9 take the time. They tried sealed cells. The problem with
10 sealed cells, it was .09 cents a pound more than the
11 I.G. Farben cell. The life span was better. You will hear
12 testimony, in order to save the business, they had to replace
13 this.

14 Here is the Alcan testimony. They licensed it in
15 1996, but it had never been tested. You have to test it with
16 the feed material or the brine from the Salt Lake. They had
17 searched the world. This was their only option. They never
18 tested it before they licensed it, and it took them not quite a
19 year to actually build the first cell, run it. And then the
20 testimony is they couldn't run it long enough to even find out
21 what the problems were. They spent a year doing that, 1997,
22 1998. They tried it again, and it didn't work. All the time
23 they're doing that, you know what is happening with the cash?
24 It is being pulled out with dividends. They couldn't produce
25 high enough quality feed, and the reason was there were two

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Opening - Mr. Beus

1 real problems. The feed that they needed from the Great Salt
2 Lake had iron and lithium in it, and they couldn't get it
3 solved. They abandoned it.

4 Then, they did their own research with some engineers
5 and came up with another cell. And when they got a cell that
6 worked better -- didn't really solve the problems completely,
7 but it was better -- by the time they did that, everything was
8 gone. They sold Sabel. Put \$8 million into that. They were
9 bankrupt, and they took a bankruptcy.

10 Next.

11 THE COURT: Just to give you an awareness of the time,
12 we're going to stop in ten minutes.

13 MR. BEUS: Okay. Let me do as best I can.

14 This is what Mr. Trip says. You had to modernize to
15 save the business. He was the production manager at this
16 facility. Mr. Legge says it wasn't competitive.

17 64. Let me show you how much chlorine they were
18 emitting that they had to solve. This is pounds per year, in
19 the millions.

20 66. Mr. Thayer, the vice president of operations,
21 couldn't produce magnesium economically. They needed an
22 infrastructure change. The sealed cells was 9 cents more. I'm
23 repeating myself.

24 67. They tried some other cells. They did some work
25 on side-entry cells and packed cells. They all failed, and

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Opening - Mr. Beus

1 they gave them up. So they really didn't have what they
2 needed.

3 I'm going to skip through a little. Let's go to 73.
4 According to Mr. Thayer -- and they thought about, and you'll
5 see some documents in this case, about can they sell this
6 facility. You've going to see in those documents that they
7 couldn't sell this facility probably to anybody without a
8 technology upgrade. The existing technology didn't comply with
9 the Clean Air Act. And the business was not sellable without
10 M-cell technology. And the money was all gone. They had taken
11 the money.

12 74. Here is a letter to Mr. Rennert from Mr. Legge,
13 in April of 2000. They're now on the ropes. It is uncertain
14 that the sale of the facility can be accomplished without a
15 technology upgrade to enhance its asset value. MagCorp
16 questions whether the business is actually salable without a
17 new DC cell technology upgrade.

18 Mr. Rennert, what does he do, who is the one deciding
19 to take these dividends?

20 75, please. He didn't know it was necessary to
21 modernize the equipment to save the business. He had no idea
22 at all what the cost might be for new technology when he took
23 the \$118 million. None.

24 76. Remember, he is getting a million two a year to
25 consult and be knowledgeable about this. 76. He didn't know

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Opening - Mr. Beus

1 the difference between I.G. Farben cell. He didn't know what
2 the difference of these cells were; sealed cell, Alcan cell, or
3 M-cell. He was never familiar with the Alcan technology, where
4 they spent almost three years trying to make Alcan work while
5 they are pulling out all of these dividends.

6 77. He didn't recall any technology discussion at the
7 time of the notes offering.

8 But right in the notes offering itself, it says
9 they're going to have new technology, and they put a budget in
10 that document of \$40-plus million. He didn't consider the
11 state of the technology or its effectiveness when he took the
12 \$118 million.

13 Your Honor, if this is a good time, I have got one
14 little section left, and I can't get it done in ten minutes.
15 What is your preference?

16 THE COURT: So how much time do you have remaining?

17 MR. BEUS: Probably about 13, 14, or 15 minutes.

18 MR. HAVELES: I have no objection if he continues.

19 THE COURT: Thank you, counsel.

20 We're going to need to show the jury the jury room and
21 the like, and I don't want them kept late, so I appreciate
22 that. We'll finish the remaining time in your opening in the
23 morning.

24 Members of the jury, thank you very much for your
25 attention and diligence. Ms. Nunez is going to show you the

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Opening - Mr. Beus

1 jury room and give you instructions for tomorrow. We will
2 start at 9:30 tomorrow. I will have some breakfast for you
3 beginning at 9:00.

4 Please do bear in mind my instructions about no
5 communications with each other or anyone else about the case,
6 no research about the case through any means, and please do
7 keep an open mind, as we have just begun here.

8 Thank you so much. We'll see you in the morning .

9 (Continued on next page)

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Opening - Mr. Beus

1 (Open court; jury not present).

2 THE COURT: Please be seated.

3 So, Mr. Beus, we will begin in the morning with you,
4 15 minutes, and then we will turn it over to Mr. Haveles.

5 Matters to take up, counsel?

6 MR. HAVELES: None on behalf of defendants.

7 MR. BEUS: No, your Honor.

8 THE COURT: I will meet with you at, let's say, 9:15,
9 so we can address matters.

10 Please do communicate with each other, as needed
11 tonight; and if in the morning there is anything you think we
12 should talk about in what will be the first sequence following
13 the openings, I will ask you to raise it then; and then,
14 otherwise, we will proceed at 9:15.

15 Thank you.

16 (Adjourned to February 3, 2015, at 9:15 a.m.)

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